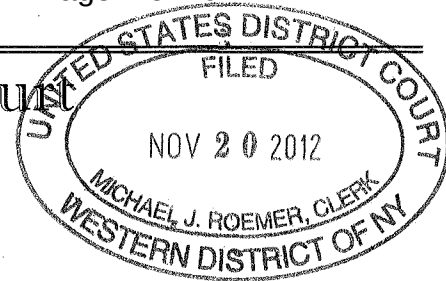


United States District Court
for the
Western District of New York



United States of America)

v.)

Case No. 12-M- 2166)

GARY C. HAMMER)*Defendant*

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Beginning in or about the date of July 17, 2012 through November 13, 2012, in the County of Erie in the Western District of New York, the defendant violated 18 USC §2320, an offense described as follows:

The defendant intentionally trafficked in goods and knowingly used a counterfeit mark on or in connection with such goods.

This criminal complaint is based on these facts:

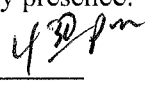
SEE ATTACHED AFFIDAVIT

☒ Continued on the attached sheet.


Complainant's signature

Nicholas M. Peruzzini, Special Agent
Department of Homeland Security
Immigration & Customs Enforcement
Printed name and title

Sworn to before me and signed in my presence.

Date: November 20, 2012 


Judge's signature

City and State: Buffalo, New York

HUGH B. SCOTT
United States Magistrate Judge
Printed name and title

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, Nicholas M. Peruzzini, being duly sworn, depose and state the following:

1. I am a Special Agent with the Department of Homeland Security, Immigration and Customs Enforcement (ICE assigned to Homeland Security Investigations (HSI)). I have been employed as a Special Agent since February of 2007. During my employment with HSI, I have participated in investigations and/or criminal prosecutions concerning trafficking in counterfeit software, footwear, apparel, purses and other counterfeit merchandise. I am familiar with how counterfeit goods are imported, distributed, and sold.

2. I make this affidavit in support of a criminal complaint charging Gary C. HAMMER (DOB: 11/17/XXXX) with violating Title 18 United States Code, Section 2320 (Trafficking in Counterfeit Goods).

3. I am currently involved in an investigation that involves the sale, and distribution of counterfeit consumer goods via the internet. As will be discussed more fully below, there is probable

cause to believe that this individual has sold consumers infringing copyrighted materials and counterfeit goods bearing trademarks.

4. This affidavit is submitted for a limited purpose of establishing probable cause for the issuance of attached criminal complaint and corresponding arrest warrant. Therefore, not all facts of the investigation are contained herein. The facts set forth in this affidavit are based upon my own personal knowledge; knowledge obtained from other individuals, including law enforcement officers and industry representatives; my review or the review by other law enforcement officers of documents of undercover law enforcement activities related to this investigation; communications with others who have personal knowledge of the events and circumstances described herein; consultations with technical industry experts and information gained through my training and experience.

**Probable Cause to believe the
described offenses are being committed**

5. On or about July 17, 2012 your affiant was contacted by Bob Bekker of AMB research and Tom Montgomery, Senior Privacy Investigator, Microsoft Corporation, regarding an individual believed to be selling counterfeit Microsoft software via the internet. Bekker stated that he had purchased two copies of

Microsoft Windows XP Professional for \$40.00 each and two copies of Microsoft Office Enterprise at \$40.00 each. The total was \$160.00 plus \$5.00 shipping for a total of \$165.00. A postal money order was sent to Gary HAMMER, 27 Ludwig Ave, Cheektowaga, NY 14227.

6. On or about August 7, 2012, Lisa Blinzler, Anti-Piracy specialist for Microsoft Corporation, found the Windows XP Professional w/SP2 and the Office Enterprise edition purchased by Microsoft on or about July 17, 2012, to be counterfeit.

7. On or about August 8, 2012 SA Peruzzini encountered a listing via the website ww.craigslist.org stating the following information:

"Microsoft Vista Business software, Brand New! - \$30 (Cheektowaga)
Date: 2012-08-07, 2:46AM EDT Hi! We have only (I) Microsoft Vista Business (32-bit) OE.M full version software available. These were originally distributed by Dell but will work on any make computer or homebuilds. They come with a valid, unused product key # as well. They are only: \$30 each. We also have (1) Microsoft Vista Home Premium (64-bit) full recovery software for HP/Compaq systems and are selling these for only: \$30 each. Call us at: (716) 897-1616 or email at: jazmol@yahoo.com Thanks! P.S.---These are even great for those who wish to install Windows 7 on a system but don't want to pay the high price for the full retail version by installing the Vista first, you can buy the much cheaper Windows 7 "upgrade software.
Location: Cheektowaga
Posting ID: 3174151216"

8. On or about August 8, 2012 SA Peruzzini encountered a listing via the website ww.craigslist.org stating the following information:

"APPLE MAC owners: Microsoft Office 2011, good for 5 users, BRAND NEW! - \$75 (Cheektowaga)
Date: 2012-08-07, 2:47A.M EDT We have only 1 of the Microsoft Office 2011 Mac Standard Plus sets available at this time. This Office Suite includes Word, Excel, Access, PowerPoint, Publisher, Outlook, Entourage, One Note, etc.... The Product Key is good for up to 5 different installs (this means 5 different computers once installed on a computer, you can install it over & over again on that same system and that only counts as the one original install). These go quick when we get them so be sure to act quickly to avoid disappointment. They are BRAND NEW still in packaging and come with valid, unused Product Key. These are labeled for use on Mac systems but I have been told by other customers that they will install & work on Windows-based PC's as well (although I can't vouch for this as I have not tried to do this!) They are only \$75 each Call us at: (716)897-1616 or email at: jazmol@yahoo.com
Thanks! P.S.--- If you buy the retail boxed version, you will easily spend \$150 or more so save at least 50% by buying here!
Location: Cheektowaga
PostingID: 3174151368"

9. On or about September 24, 2012, an HSI Agent acting in an undercover capacity, (hereinafter UC) placed a telephone call to Gary HAMMER to arrange the purchase of suspected counterfeit Microsoft software. The phone call was placed in reference to a craigslist ad advertising the sale of Windows XP professional. The telephone number listed in the ad (716-897-1616) matched the telephone number previously utilized by Microsoft investigators to

make a purchase of counterfeit merchandise. HAMMER stated that he was selling 7-8 Copies of Windows XP left for \$40 per piece and Microsoft Office Enterprise for \$40. HAMMER also stated in addition to Windows XP he had Dell OEM (Original Equipment Manufacturer) discs, Roxio cd/dvd creator, Cyberlink cd/dvd creator, Microsoft Office 2007 Enterprise edition, Windows 7 Professional (Dell OEM), Microsoft works 9, Adobe Photoshop elements, and other miscellaneous items. The UC and HAMMER agreed to meet the next day (September 25th, 2012) at the residence of HAMMER, 27 Ludwig Ave., Cheektowaga, NY 14227.

10. On or about September 25, 2012, an HSI Agent utilizing a UC, made a monitored purchase of suspected counterfeit Microsoft software at 27 Ludwig Avenue, Cheektowaga, NY 14227. The UC arrived at 27 Ludwig Avenue and was greeted at the door by an individual know as "Gary" (HAMMER). During the meeting HAMMER instructed the UC how to install the software and described booting instructions. HAMMER stated that the Windows XP included Service pack 2 and service pack 3. HAMMER also stated that he has Microsoft Office and will also sell it for \$40 with volume license which means it can be used it as many times as the user wants. HAMMER noted that the Windows XP can only be installed on only one computer at a time. The UC paid HAMMER \$40 for a disc said to be Microsoft Windows XP and exited.

11. In a report dated October 1, 2012, Erica Krasovic, Anti-Piracy specialist for Microsoft Corporation, stated the following regarding the authenticity of the software obtained by the UC purchase on or about September 25, 2012:

- a. On October 1, 2012 she examined one unit of purported Microsoft software, Microsoft Original Equipment Manufacturer ("OEM") Windows XP Professional Edition CD-ROM.
- b. Based on her examination, she is certain that the Microsoft Original Equipment Manufacturer ("OEM") Windows XP Professional Edition CD-ROM software is counterfeit.

12. On October 23, 2012, a "Cease and Desist Illegal Distribution of Counterfeit Microsoft® Software" notice was sent HAMMER via FedEx and delivered on October 25, 2012. A "Cease and Desist Illegal Distribution of Counterfeit Microsoft® Software" notice was also sent electronically to HAMMER via the e-mail address jazmol@yahoo.com on October 23, 2012. The letter stated the following in sum and substance:

"Dear Gary Hammer: We are writing to inform you that you have distributed purported Microsoft Windows & Office software, which Microsoft has analyzed and identified to be counterfeit. The distribution of counterfeit software violates federal copyright and trademark laws, in addition to some state and local laws. For willful infringement, federal law authorizes statutory damages up to \$150,000 per copyrighted work and up to \$2,000,000 per counterfeit trademark. Even an unintentional distribution of counterfeit Microsoft software could subject you and your company to civil liability under federal copyright and trademark laws. Intentional violators may also be subject to criminal penalties.

Microsoft demands that you immediately cease and desist all infringing activity and reserves the right to seek all viable legal remedies without further notice. If you want to be sure you are selling genuine Microsoft software, acquire your software and components from an authorized Microsoft distributor. You can find a list of authorized distributors at <http://oem.microsoft.com/script/DistributorPage.aspx>. For information regarding retail distributors near you, please call 1-800-426-9400. If you have questions regarding how to identify counterfeit software, go to our "How to Tell" website at <http://www.howtotell.com>. In addition, for more information regarding Microsoft's efforts to combat software piracy, please visit the Microsoft Piracy homepage at <http://www.microsoft.com/piracy/>. If you would like to contact us to discuss this letter, please call 1-888-760-5877.

Sincerely, Microsoft Compliance Support Program"

13. On or about November 13, 2012, agents acting in an undercover capacity attempted to arrange a purchase of suspected counterfeit Microsoft Brand software from Gary HAMMER. The UC telephoned HAMMER at 716-897-1616 and left a voice mail message.

The UC made a second attempt to contact HAMMER via telephone number (716) 897-1616. During this call a female who identified herself as "KAREN" answered the telephone and stated HAMMER was in the shower but he has a copy of Office set on the side for the UC. KAREN instructed the UC to come to the Ludwig Avenue address and described it to UC as the third house from the dead end of Ludwig Ave. KAREN and UC agreed to meet. Thereafter, the UC arrived

at the Ludwig Avenue address where both HAMMER and KAREN were present. HAMMER explained to UC that he is selling the UC the "Enterprise Edition" of the software which is "the better one." HAMMER then explained the software contains the "VLK" (Volume License Key) and can be installed on as many times as a user wants. HAMMER also stated that the software he is selling is created by creating a copy of the master software. The UC then paid HAMMER \$40.00 for the Microsoft Office Enterprise Addition software and left.

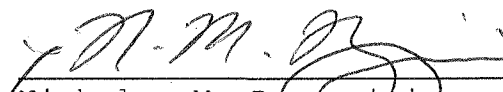
14. In a report dated November 19, 2012, Katie Hasbrouck, Anti-Piracy specialist for Microsoft Corporation, stated the following regarding the authenticity of the Microsoft software Purchased on November 13, 2012:

- a. On November 19, 2012 she examined one unit of purported Microsoft software, Microsoft Office Enterprise Edition 2007.
- b. Based on her examination, she is certain that the Microsoft Office Enterprise Edition 2007 is counterfeit.

15. Your affiant has spoken with representatives from Microsoft and they have confirmed that Gary HAMMER is not an authorized Microsoft distributor and is selling Microsoft products in a manner inconsistent in which authentic Microsoft products are sold.

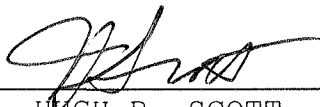
16. On or about November 19, 2012, SA Cornelius O'Rourke conducted New York State Records query. Records indicate that Gary Charles HAMMER, (DOB 11/17/XXXX) New York State Drivers License registration with an address of record of 27 Ludwig Ave., Cheektowaga, NY 14227.

WHEREFORE, is respectfully submitted that probable cause exists to believe that the named defendant, has violated federal copyright laws, to wit, Title 18 United States Code, Section 2320 (Trafficking in Counterfeit Goods). I therefore am requesting that a complaint and arrest warrant be issued for Gary C. HAMMER.



Nicholas M. Peruzzini
Special Agent
Department of Homeland Security
Homeland Security Investigations
Immigration & Customs Enforcement

Sworn to before me this 20th
day of November, 2012. 4:32 pm



HON. HUGH B. SCOTT
United States Magistrate Judge